IN THE

Supreme Court of the United States

OCTOBER TERM, 1943

No. 48

W. J. MEREDITH, JAMES G. MARTIN and A. R. [illegible],

Petitioners,

versus

THE CITY OF WINTER HAVEN, a municipal corporation, et al.,

Respondents.

BROUGHT UP ON PETITION FOR WRIT OF CERTIORARI FROM THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF OF PETITIONERS

D. C. HULL
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SUBJECT INDEX

ALPHABETICAL LIST OF AUTHORITIES CITED

ALPHABETICAL LIST OF AUTHORITIES CITED
(Continued)

Cases Page

General Works

Legal Publications

Statutes, Rules and Constitutional Provisions

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STATEMENT OF THE CASE

It is necessary for us to take issue with some of the assertions in the "Restatement of the Case" in the Brief of Respondents.

The statement is made (page 2) that the petitioners admit that, if the Federal Court must follow the decisions in **Andrews v. Winter Haven, 148 Fla. 144, 3 So. (2nd) 805, Outman v. Cone, 141 Fla. 196, 192 So. 611, Taylor v. Williams, 142 Fla. 402, 195 So. 175,** and **State v. Special Tax School District No. 5 of Dade County, 107 Fla. 93, 144 So. 356,** their prayer must be denied.

This is incorrect.

We were careful to point out that the Florida Supreme Court, in none of these cases, has ever receded from the principle announced, over 70 years ago, in **Columbia County Commissioners v. King, 13 Fla. 451,** which it adopted from the holding of this Court in **Gelpcke v. Dubuque, 1 Wall. (U.S.) 175,** that if a contract when made was valid under the laws of the State, as then expounded and administered, its validity is not impaired by a subsequent decision altering the construction of the State law.

We also demonstrated that in **State v. Special Tax School District No. 5,** the Florida Supreme Court affirmed the holding in **Sullivan v. City of Tampa,** upon which we rely, and reiterated that the Court would read nothing into the 1930 **Amendment to Section 6, Article IX,** of the **Florida Constitution,** by implication.

In the **School District case,** it was emphasized that the **1930 Amendment** is "silent as to the interest rate of refunding bonds and the price at which they may be sold," and that there was certainly no intent that "this power of refunding should be impaired or unduly burdened."

This decision was rendered after the enactment of the General Refunding Act of 1931, and the refunding bonds there, as here, were issued uder that Act.

Also, we took pains to point out that the Florida Supreme Court, in none of these cases, nor anywhere else, has ever held invalid a provision similar to that in the refunding bond contract involved in this case, to the effect that, if any of the refunding bonds should be adjudged illegal or unenforcible, in whole or in part, then the holders of the refunding bonds shall be entitled to assume the position of holders of a like amount of the outstanding indebtedness thereby refunded, and as such to enforce their claim for paayment, but that, under Florida law, and especially under the decisions in **Jefferson County v. Hawkins, Trustee, 23 Fla. 223, 2 So. 362, and State ex rel. Gillespie v. Walthal, 124 Fla. 866, 169 So. 552,** this provision of the Winter Haven refunding bond contract is valid, regardless of **Andrews v. Winter**

Haven, Outman v. Cone, Taylor v. Williams, or any other Florida decision.

Respondents state (page 2) that petitioners have not alleged that they knew of the opinion in **Sullivan v. City of Tampa, 101 Fla. 298, 134 So. 211,** or that they relied upon it, or that they acquired their bonds before the Florida Supreme Court decided the **Outman case.**

We didn't allege it because it was not necessary.

The prevailing rule is that reliance need not be affirmatively shown, but will be implied from the attendant circumstances; and that reliance will be presumed until it is affirmatively proved that there was no reliance.

> **21 Corpus Juris Secundum 330**
> **Retrospective Operation of Overruling Decisions (Snyder), 35 Illinois Law Review, 121, Text 131, Footnote 111.**

In **County Commissioners of Columbia County v. King, 13 Fla. 451,** it was not made to appear that the holders of the bonds knew of or relied upon the prior decision in which the validity of railroad aid bonds had been upheld, but only that "the case of Cotten v. the Commissioners of Leon County was pending if not already decided by the Supreme Court, at the very moment that the earliest of the bonds of Columbia County were being issued, and they thus went forth upon the market and into the hands of third parties, not only sanctioned by the Legislature, but by the Judicial branch of the Government, and thus they were treated and accepted by the world as having the very highest and strongest endorsement as to their validity. . . ."

Respondents state (page 5) that petitioners claim to be the owners of bonds issued under a "void" agreement between the City of Winter Haven and its refuding agents.

It is not shown anywhere that the agreement was void, even though it may have resembled, in some of its features, the contracts that were referred to in the cases of **Taylor v. Willaims, 142 Fla. 402, 195 So. 175, Howey v. Williams, 142 Fla. 415, 195 So. 181, Bradford County v. Nuveen, 133 Fed. (2nd) 169, Vero Beach v. Rittenoure, 113 Fed. (2nd)**

269, and American United Insurance Co. v. Avon Park, 311 U. S. 138, 61 S. Ct. 157.

Be that as it may, petitioners do not rely upon the contract between the City and its refunding agents, as the plaintiff in **Andrews v. Winter Haven, 148 Fla. 144, 3 So. (2nd) 805**, apparently did, but on the City's contract with its creditors, embodied in the refunding bonds and interest coupons and in the resolutions authorizing them.

The validity of refunding bonds is not affected by the validity or invalidity of the contract between the issuing unit and its refunding agents.

> **State v. Sarasota County, 118 Fla. 629, 159 So. 797.**
> **State v. City of Ft. Myers, 145 Fla. 135, 198 So. 814.**

Respondents persist, throughout their brief, in referring to such part of the deferred interest as the City agreed to permit the bondholder to recoup, in the event of a call of the bonds before their maturity, as a "premium."

The fact is that, when the City decided to refund its outstanding bonds, by isuing the 1933 refunding bonds, the then outstanding bonds that were being refunded with Series A Refunding Bonds bore interest to maturity at 6 per cent and were not callable. The then outstanding bonds that were to be refunded by Series B Refunding Bonds bore 5½ per cent interest and were not callable.

Under Florida Law, a county or municipal bond continues to bear interest, after maturity, at the contract rate specified in the bond, until paid. **Jefferson County v. Lewis, 20 Fla. 980. Jefferson County v. Hawkins, Trustee, 23 Fla. 223, 2 So. 362.** The City was already obligated, not only to pay the principal, but to pay interest at the full rate of 6 per cent on the 6 per cent bonds, and at 5½ per cent on the 5½ per cent bonds, not only until maturity of the bonds, but until they were paid. But the City was unable to pay the full amount of the maturing principal and the currently maturing interest on its bonds, as it fell due, so the time of payment of the principal was extended or deferred, and

the time of payment of a portion of the interest was also deferred, until the maturity of the refunding bonds that were issued to take the place of the old bonds. The refunding bonds were made callable, not upon payment of a "premium," above principal and interest, but upon payment of the full amount of principal and a specified portion of that part of the interest that was deferred until maturity of the bonds; the proportion of the deferred interest to be paid on call being dependent upon the time of the exrcise of the City's option to call the refunding bonds before their maturity.

The provision for payment of a portion of the deferred interest, on call of the bonds, did not contemplate the payment of a premium, but simply provided a method whereby the holder of the bonds was permitted to recoup a portion of what the City was obligated to pay him at the maturity of the bonds.

See: **State v. Sarasota County,
118 Fla. 629, 159 So. 797.**

Respondents assert (page 12) that the City paid its refunding agents a fee of $35,100.00 and that petitioners' Exhibit B (Tr. 86) says this amount "was added to the debt of the City."

A careful check of Exhibit B fails to disclose any such statement.

Respondents assert that this "was admitted in the State Court (p. 150 Tr.)".

Upon referring to page 150 of the Transcript, we find that the assertion that the City paid a refunding fee that "was added to the debt of the City" is something that the City set up, in its Answer in the **Andrews case,** long after the transaction occurred, as an excuse to evade its obligation to pay a portion of the interest on its bond debts.

Petitioners would respectfully point out (1) that if the City paid the fee, it didn't pay it to petitioners, (2) that if the fee was paid, it was paid to the City's own agents, (3) that the petitioners' refuding bonds have been validated in the courts of Florida, in statutory bond validation proceed-

ings, and cannot be invalidated by the City's subsequent action in paying a fee to its own agents, and (4) that the payment by the City of a fee to its refunding agents does not affect, one way or the other the validity of the City's contract with the holers of its refuding bonds.

FIRST QUESTION

On at least one matter, the parties to this litigation are in agreement. Under the rule announced by this Court in **Erie Railroad v. Tompkins,** "the law to be applied" in this case is the law of Florida.

We have earnestly contended in our main brief that the law of Florida, as declared by the Florida Supreme Court at or about the time of the issuance of the refunding bonds here involved, is the law applicable to this case, under the rule announced in the case of **Columbia County Commissioners v. King, 13 Fla. 451,** and approved in the cases of **State ex rel. Nuveen v. Greer, 88 Fla. 249, 102 So. 739,** and **Humphreys v. State ex rel. Palm Beach Co., 108 Fla. 92, 145 So. 858.** This, we contended, is the law of Florida applicable under the rule of the **Erie Railroad case.** We have set forth our contentions in full, and we shall not repeat them here.

Since filing our main brief and reading the reply brief of respondents, however, we have had occasion to re-examine the recent decisions of the Florida Supreme Court relied upon by respondent as justification for repudiating the provisions of the refunding bonds relative to payment of "deferred interest." We are firmly convinced that the law of Florida, as defined in these recent cases relied upon by respondents, not only fails to support the theory of the case advanced by respondents, but is entirely consistent with our position in this litigation.

What Is Law of State To Be Applied Under Erie Railroad Case—Stare Decisis Doctrine

In the case of **Erie Railroad Company v. Tompkins, 304 U. S. 64, 58 S. Ct. 817, Text Page 822,** this Court said:

"Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the **law** of the **state.** And whether the law of the state shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern." (Emphasis ours.)

The following statement in the opinion of the Circuit Court of Appeals for the Fourth Circuit, in the case of **New England Mutual Life Insurance Company v. Mitchell, 118 Fed. (2nd) 414, Text Page 420,*** illustrates the rule governing the applicability of state law as evidenced by judicial decisions:

"In ascertaining the applicable law of the state, we are to consider court decisions and other available sources of local law; and we are to apply court decisions in the light of the well-established stare decisis rule and its limitations."

In discussing the doctrine of Stare Decisis, the Florida Supreme Court, in the case of **McGregor v. Provident Trust Company of Philadelphia, 119 Fla. 718, 162 So. 323, Text Page 328,** said:

"So well known as to render discussion of it almost superfluous, it is a maxim to the effect that, when **a point of law** has been settled by decision, it forms a precedent which is not afterwards to be departed from." (Emphasis ours.)

It is the point or principle of law that really matters in giving effect to the doctrine of Stare Decisis. It is the **point or principle** of state law established by decisions of state courts that state courts should and federal courts must apply to new cases as they arise.

It is true, of course, that abstract principles of law are not to be stripped from their factual moorings, but actual facts are of importance only in illustrating and limiting the applicability of the **principles of law.** It is of no consequence,

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* **Certiorari denied, 62 S. Ct. 60.**

in evaluating the effect of a decision as a precedent, whether or not the facts **assumed** by the Court to exist, actually did exist. This obvious conclusion is illustrated in the following statement from **14 American Jurisprudence, Page 289:**

> "Even if the court, announcing the conclusion, misapprehends or mistakes the facts, the conclusion, to be of any value as a precedent, must be taken as applicable to the facts **as assumed by the court**; they, as concerns the judgment, are the facts and, whether existing or nonexisting, either prompt or compel the **conclusion of law** that determines the judgment." (Emphasis ours.)

Principles of Law Defined in Outman, Taylor and New Smyrna Beach Cases

We look to the cases upon which the respondents so confidently rely as precedents to defeat the provisions of the refunding bonds relating to the payment of deferred interest. In each of these cases, we find the facts, which either existed or were **assumed** by the Court to have existed, to bring it within sound principles of Florida constitutional law. The **law of these cases** is that, under **Article IX, Section 6,** of the **Florida Constitution, as amended,** the obligation of bonds outstanding prior to the adoption of that constitutional amendment cannot be increased, directly or indirectly, by the issuance of refunding bonds, without the approval of the people to be taxed, and that any provisions of refunding bonds that do increase the burden on the taxpayers, over the burden imposed by the original bonds, are unconstitutional, unenforceable and void.

The case of **Outman v. Cone, 141 Fla. 196, 192 So. 611,** involved the right to call bonds under a provision authorizing their call, at that particular time, without payment of any "deferred interest," if the money made available to pay the bonds was obtained from sources other than the sale of new refunding bonds. If, however, the money to call the bonds was to be raised by selling new refunding bonds, a

portion of the deferred interest was to be paid.* The Florida Court stated that it was "apprised of no good reason for the difference" in amounts to be paid, depending on the source of payment.

The Florida Court either **found** or **assumed** the fact to be that payment of the deferred interest as provided in the bonds and authorizing resolution would, when added to the expense of refunding, make the bonds more burdensome than the original bonds, and, therefore, in conflict with **Article IX, Section 6,** of the **Florida Constitution.** We do not know whether, as a matter of fact, the payment of the portion of the deferred interest required in such bonds, together with the refunding fee, would exceed the limitations prescribed by **Article IX, Section 6,** but the Florida Court apparently found or assumed that such limitation would be exceeded.

In the case of **Taylor v. Williams, 142 Fla. 402, 195 So. 175,** the Florida Court again either **found** or **assumed** the fact to be that the deferred interest provisions of the bonds under consideration would increase the burden of the taxpayers, in violation of **Article IX, Section 6.** The **Taylor case,** however, also involved provisions pledging revenues, in addition to those pledged in support of the original bonds, which were undoubtedly in violation of **Article IX, Section 6,** which is a matter not involved in the case at bar.

The case of **State v. City of New Smyrna Beach, 148 Fla. 482, 4 So. (2nd) 660,** was a statutory proceeding to validate a new issue of refunding bonds. Just how it could possibly adjudicate the obligation of the City to pay deferred interest on an old issue of refunding bonds is difficult to understand. At any rate, the Florida Court, in this case, did not say anything or decide anything which purported to extend the **principles of law** recognized and defined in the **Outman** and **Taylor cases.**

We have no quarrel with the principles of law announced in those cases. The Florida Constitution was expressly amended by the people to reserve to them the right to ap-

*** Such ambiguous provision is not contained in the bonds herein involved.**

prove or disapprove the creation of new public debts and long term financial obligations. We do say, however, that whether or not a new debt or financial obligation is created by a refunding bond, in excess of the amount of the debt and obligation of the original bond, is a matter that can be demonstrated in any particular instance by simple arithmetic!

Andrews v. City of Winter Haven— The "Made" Case

While pointing to the case of **Andrews v. City of Winter Haven, 148 Fla. 144, 3 So. (2nd) 805,** as clinching their argument as to what the law of Florida is, the respondents (the same City of Winter Haven) has surprisingly little to say about the amendment to the bill of complaint in this case, which demonstrates that this was a "made" case. The record of this "made" case is before this Court (T. 109-179) and discloses that, on the busy morning of June 23, 1941, Andrews and the City were able to file complicated pleadings in the case, present involved constitutional questions before the Circuit Court of Polk County, Florida, obtain a decree that a Philadelphia lawyer could hardly draft in two days, and file that decree for record, at the County Seat in Bartow, about twelve miles from the place of the hearing—all in plenty of time for an early lunch! We pointed out in the amendment to the complaint that the real interests of Andrews and the City were identical—to-wit, to repudiate the obligation on the City's bonds!

The following from the opinion of the Supreme Court of Alabama, in the case of **Alabama National Bank v. Mary Lee Coal & Railway Co., 109 Ala. 288, 19 So. 404, Text Page 409,** is particularly pertinent:

> "But, beyond this, a decree rendered by consent, upon a collusive and fraudulent presentation of the case, is to be taken as the act of the parties thereto, and not as the judgment of the court. As said by Lord Brougham in Earl of Brandon v. Beecher: 'A sentence is a judicial determination of a cause agitated between real parties, upon which a real interest has

been settled. In order to make a sentence, there must be a real interest, a real argument, a real prosecution, a real defense, a real decision. Of all these requisites, not one takes place in the case of a fraudulent and collusive suit. There is no judge, but a person, invested with the ensigns of a judicial office, is misemployed in listening to a fictitious cause proposed to him. There is no party litigating. There is no party defendant,—no real interest brought into question.' 3 Clark & F. 507; Lawrence Manuf'g Co. v. Janesville Cotton Mills, 138 U. S. 552, 11 Sup. Ct. 402; Texas & P. Ry. Co. v. Southern Pac. Co., 137 U. S. 48, 11 Sup. Ct. 10."

Despite the somewhat abashed assurance with which the respondents point to the **Andrews case,** involving, as it did the very same issue of bonds as is involved here, we do not believe that this case can afford any real comfort to the respondents, even if it be conceded to state the law of Florida that the federal courts must apply. The record of the Andrews case was made by **Mr. Andrews** and the **City.** The petitioners had nothing to do with making that record. The Supreme Court of Florida was bound to regard as the facts of the case the allegations contained in the City's answer which were not put in issue by Mr. Andrews. The facts which the Florida Court **found,** or **assumed** to **find,** from this record, must be regarded as the **facts of that case** by the federal courts who look to it as a precedent in ascertaining the principles of law to be applied to other cases.

It is not surprising to find, under the circumstances connected with this "made" case, that the facts presented to the Florida Supreme Court were such as to require the very conclusions which the Florida Court reached! For example, one of the allegations in the answer, which on hearing on bill and answer was necessarily admitted under Florida practice, was to the effect that the amount of a refunding fee of $35,100.00 was added to the original debt without a vote of the people, and that this, together with the deferred interest, exceeded the limitations of **Article IX, Section 6,** of the **Florida Constitution** (T. 149-150).

We hasten to assure the Court, however, that the present case is no "made" case. There is nothing in this record to show that **Article IX, Section 6,** of the **Florida Constitution** has been violated. As a matter of fact, we shall hereafter endeavor to demonstrate mathematically that there has been no such violation. It is no concern of ours whether Mr. Andrews and the City of Winter Haven agree to purported facts which require the Court to declare invalid a portion of Mr. Andrews' bonds. What we do say is that the application of the law invoked by Mr. Andrews to the state of facts submitted by **him** requires a judgment in our favor when applied to the **real facts.**

The petitioners are entitled to have a decision determining **their rights,** rendered on the basis of the **facts** and **considerations adduced by them.**

> **Chase National Bank v. City of Norwalk, Ohio, 291 U. S. 431, 54 S. Ct. 475, 478.**

No Violation of Article IX, Section 6, As Construed By Florida Court

If the deferred interest provisions of the petitioners' refunding bond contract are to be governed by the decisions of the Florida Court in the **Outman, Taylor, Andrews,** and **New Smyrna Beach cases,** and if such cases as **Columbia County Commissioners v. King** are to be entirely disregarded, then it would appear that the holdings in these later cases may thus be summarized: "When deferred interest is payable under the provisions of callable refunding bonds, and the amount of such deferred interest payable at the time the bonds are called for payment, exceeds the obligation of the original bonds, all without approval by the vote of the people, **Article IX, Section 6,** of the **Florida Constitution** is violated, and the provisions of the bonds relating to deferred interest are void and unenforcible."

The facts **existing** or **assumed** by the Florida Court to exist in the above cases disclosed to the satisfaction of the Florida Court that the deferred interest there involved was a financial burden on the taxpayers, in excess of that imposed

by the original bonds, in violation of **Article IX, Section 6,** of the **Florida Constitution.**

There is nothing in the **principles of law** applied by the Florida Court in the above cases to support the inference that appears throughout the brief of respondents that all defered interest provisions are unconstitutional. That only such deferred interest provisions as operate to increase the taxpayers' burden are invalid is apparent from the fact that the Florida Supreme Court, in the case of **State v. Sarasota County, 118 Fla. 629, 159 So. 797,** specifically approved deferred interest provisions basicly similar to those here involved.

This is further evidenced from the case of **State v. Special Tax School District, No. 3, of Pinellas County, 143 Fla. 557, 197 So. 127.** In that case the Florida Supreme Court said:

> "The bonds proposed to be refunded provide among other things that they may be called 'on or prior to October 1, 1942, at par and accrued interest at the rate then prevailing as enforcible and collectible.' They are being called under this provision and all prerequisites to the call have been followed. . . .
>
> "There is no authority whatever for enforcing the deferred interest coupons **if the outstanding bonds are called prior to October 1, 1942,** and replaced with funds realized through tax sources or from any source including the sale of new refunding bonds. The chancellor recognized this and so provided in his validating decree. His decision is supported by Outman v. Cone, Fla., 192 So. 611; Taylor v. Williams, Fla. 195 So. 175." (Emphasis ours.)

It is clearly inferred by the language above quoted that if the bonds were called **after** October 1, 1942, there would have been liability for deferred interest.

Respondents attempt to make much of the fact that, if the bonds had been called within the first three years after

April 1, 1933, the payment of one-half of the deferred interest for ten years, plus the current coupon rate, would have resulted in an obligation exceeding that of the original bonds. The respondents set forth a table of interest payable on various dates at Page 9 of their brief.

But what the respondents overlook is that this case does not involve any such factual situation. As a matter of fact, the passage of time has now forever precluded the possibility of the question so persistently urged by respondents ever arising at ~~all. The~~ call with which we are here concerned was for October 1, ~~1941. (T. 97)~~

Whether the deferred interest provisions under attack increased the obligation of the taxpayers over that resting upon them under the old bonds can be mathematically determined. We set forth a table showing the total interest payable on the old bonds, if they had not been refunded, and the total interest payable, both on currently maturing coupons and as deferred interest, on the refunding bonds, computed from April 1, 1933, to October 1, 1941, the date on which the bonds were proposed to be called.

Series A Bonds	Old Bonds (6%)
Amount Owed April 1, 1933— $1,957,123.58	$1,957,123.58
Total Interest to Oct. 1, 1941— $ 885,598.41	$ 998,133.02
(Including deferred interest payable on call Oct. 1, 1941.)	

Series B Bonds	Old Bonds (5½%)
Amount Owed April 1, 1933— $ 190,931.20	$ 190,931.20
Interest to Oct. 1, 1941— $ 86,396.36	$ 89,260.35
(Including deferred interest payable on call Oct. 1, 1941.)	

Summary

Total Interest on all old bonds to October 1, 1941	$1,087,393.35
Total Interest on Refunding Bonds Series A and B, including portion of deferred interest due on call Oct. 1, 1941	$ 971,994.77
Total Savings in interest	$ 115,398.58*

Thus it is obvious that the refunding fee of $35,100.00 could not have resulted in increasing the burden on the taxpayers in violation of **Article IX, Section 6,** of the **Florida Constitution**, within the principles of law announced by the cases relied upon by the respondents themselves.

SECOND QUESTION

While we are confident that the law of Florida, as declared by the decisions of the Florida Supreme Court, when applied to the **real facts** involved in this litigation, will lead to a different conclusion than that which was necessary in the "made" case of **Andrews v. City of Winter Haven**, the petitioners have valuable contract rights which became available to them in the event that the payment of any portion of the deferred interest should be found to be unenforcible.

To illustrate this, let us go back to 1933 and consider the situation in the light of conditions then existing. The City of Winter Haven had outstanding approximately $2,000,000.00 of **non-callable** bonds, most of which bore interest at the rate of 6 per cent and the balance at 5½ per cent. Most of these bonds would not mature for many years to come.

The holders of these outstanding non-callable bonds were somehow induced to exchange them for refunding

*** In computing the interest on Series A Refunding Bonds payable on call October 1, 1941, we included one-half of the deferred interest for 10 years on each bond, $72.50, plus the currently maturing semi-annual interest at the coupon rate provided in the bonds. In computing the interest on Series B Refunding Bonds payable on call October 1, 1941, we included one-half of the deferred interest for 10 years on each bond, $47.50, plus the currently maturing semi-annual interest at the coupon rate provided in the bonds.**

bonds, dated April 1, 1933, which were **callable** evidences of of the same indebtedness evidenced by the original bonds, but which, in the event of call, bore a lesser rate of interest. Obviously, those who exchanged the original bonds for the refunding bonds were acquiring in this transaction securities inferior to the ones they had theretofore possessed, judged by the standards of the money markets of the world.

The exchange of the non-callable bonds for callable bonds was consummated pursuant to the provisions of a resolution adopted by the City of Winter Haven. This resolution constituted the contract between the City and the bondholders. It was in this resolution that the rights and obligations of the City and its bondholders were specifically outlined and defined.

It is a matter of common knowledge that in most commercial contracts the parties endeavor to anticipate and provide for contingencies that may arise in the future. The holders of the old Winter Haven bonds were no exception. While they voluntarily accepted a cut in interest and callable bonds, they prudently insisted upon contractual safeguards designed to reasonably assure them of the financial returns promised in the refunding bonds. Section 20 of the refunding resolution provided just this kind of assurance.

If it should be judicially determined that the refunding bonds held by the petitioners can be called before maturity by the now prosperous City of Winter Haven, just eight and one-half years after that City was hovering on the brink of financial disaster, without paying the petitioners the portion of the deferred interest provided for in such refunding bonds, then the contingency has arisen which was anticipated and provided for in Section 20 of the refunding resolution (Tr. 83). In that event, the petitioners are "entitled to assume the position of holders of a like amount of the indebtedness . . . refunded and as such enforce their claim for payment." In plain and simple language, the petitioners are entitled to 6 per cent interest on the **indebtedness** evidenced by Series A Bonds and 5½ per cent on the **indebtedness** evidenced by Series B Bonds.

We find no plausible defense even suggested in the brief of respondents to a judicial determination of our rights under Section 20 of the refunding resolution. Quite possibly the explanation may be that there is no plausible defense!

About the best that respondents have been able to suggest to the Court as a reason for declining to recognize and determine the rights of petitioners under Section 20 is that this would make the obligation of the City even greater than it would have been if repudiation of deferred interest had not been undertaken in the first instance! We submit that this position is utterly devoid of merit and logic. The mere fact that the City failed to consider the consequences, under its solemn contract, of embarking upon a course of repudiation, is entitled to no weight in courts of justice where contract rights are regarded as sacred and entitled to protection.

The Supreme Court of Florida, in the case of **Pierce v. Isaac, 134 Fla. 666, 184 So. 509,** in no uncertain terms, stated the rule supported by judicial decisions everywhere relating to the enforcibility of contract obligations. In the **Pierce case,** a tax payer sought to enjoin the payment of a refunding fee by a public taxing district. The basis of the taxpayer's suit was that the fee which the district was about to pay, had been increased without reason, over that provided in an earlier contract with the very same refunding agent to do the same job. While the Florida Court praised the plaintiff taxpayer for his vigilance in attempting to conserve the public revenues, it nevertheless unhesitatingly declared that the parties were competent to contract, and their contract would be enforced, even if one of the parties had driven a hard bargain. The language of the Florida Supreme Court, in the light of the **Pierce case,** can afford respondents little comfort:

> "The general rule is that competent parties shall have the utmost liberty of contracting and their agreements voluntarily and fairly made will be upheld and sustained by the courts. All parties sui juris are free to make whatever contract they may choose so long

as no fraud or deception is practiced and there is no infraction of law. The fact that one of the parties to a contract made a hard bargain will not alone avoid a contract."

In considering this question, it is well to bear in mind that this is not an action for a money judgment, but one seeking a declaration of petitioners' contract rights.

They are entitled to such an adjudication before being required to surrender their present evidences of the City's indebtedness to them.

THIRD QUESTION

The Circuit Court of Appeals Should Have Adjudicated the Matters in Controversy

In his clear and vigorous dissenting opinion in this case, Circuit Judge Sibley said:

> "There being a presently acute justiciable controversy, I think we are bound to declare the rights of the parties, though the grant of injunction is discretionary. The Constitution extends the judicial power of the United States to controversies between citizens of different States arising under the laws of a State, just as fully as to controversies arising under the Constitution and laws of the United States. There is the same power and the same duty to decide both classes of cases. This case involves no invasion of high State functions or policies as to which caution is due, but only a question of how much this City owes these bondholders on calling their bonds for payment before due. Such questions have been decided by federal courts from the beginning." (Tr. 198-199)

The views of Judge Sibley expressed in the above quoted language are fully sustained by the decisions of this Court.

In the case of **Chicot County v. Sherwood, 148 U. S. 529, 37 L. Ed. 546, 13 S. Ct. 695, (148 U. S. Text Page 534)** this

Court quoted with approval from the opinion in the early case of **Hyde v. Stone, 20 How. 170, 175,** as follows:

> ". . . But the courts of the United States are bound to proceed to judgment and to afford redress to suitors before them in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction. Suydam v. Broadnax, 14 Pet. 67; Union Bank v. Jolly's Administrators, 18 How. 503. This principle has been steadily adhered to by this court."

This Court, in its opinion in the case of **McClellan v. Carland, 217 U. S. 268, 54 L. Ed. 762, 30 S. Ct. 501, (217 U. S. Text Page 281)** stated the following:

> "So far as the record presented to the Circuit Court of Appeals shows, the only ground upon which the Circuit Court acted in postponing the suit was because the State of South Dakota, which had applied to be made a party, and which application was denied, was about to begin a suit in the state court to determine an escheat of the estate of John C. McClellan, therefore the action was stayed, first, until the beginning of such suit, and then until it was determined. It, therefore, appeared upon the record presented to the Circuit Court of Appeals that the Circuit Court had practically abandoned its jurisdiction over a case of which it had cognizance, and turned the matter over for adjudication to the state court. This, it has been steadily held, a Federal court may not do. Chicot County v. Sherwood, 148 U. S. 529, 534."

Both the **Chicot County** and **McClellan cases** were cited with approval by this Court in the case of **Kline v. Burke Construction Co., 260 U. S. 226, 67 L. Ed. 226, 43 S. Ct. 79.**

We are confident that the record in this case discloses that the Circuit Court of Appeals should have reversed the decree of the District Court, on the **merits,** and should have

adjudicated the rights of the petitioners, rather than reversing that decree only to the extent necessary to bar the doors of the federal courts to the petitioners.

Respectfully submitted,

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